

RELEASE C5874

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UNITED STATES GOVERNMENT

Memorandum

A.D.

DATE: JAN 22 1976

TO : Abraham Siegel, Regional Director
Roger W. Goubeau, Acting Regional Director
Region 31

FROM : Harold J. Datz, Deputy Associate General Counsel
Division of Advice

SUBJECT: Los Angeles Building and
Construction Trades Council, et al.
(Lujac, Inc.)
Case 31-CC-625, 31-CE-72, 31-CC-629

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This matter was submitted for advice pursuant to Manual Sections 11751.1(a) (2) and 11751.1(b) (7) for authorization to issue complaint alleging violations of Sections 8(b)(4)(i)(ii)(A) and (B) and 8(e).

FACTS

Lujac, Inc., a general contractor, is presently engaged in the construction of a firehouse at a site in Palmdale, California. Lujac is a "broker" general contractor, subcontracting out all of the labor to be performed at the Palmdale site. At all times material herein Leland Cleminson, a cement work subcontractor, has been the only nonunion subcontractor doing work at the site.

On February 11, 1975, a representative of Laborers Local 300 approached subcontractor Cleminson at the site and told him he could not proceed further on the job unless he signed a Laborers agreement and his employees joined the Laborers union. Cleminson refused to accede to the Laborers' demands. Picketing commenced on March 4 with a sign which read "Leland Cleminson Concrete No Agreement with Local 300." On March 5, the Laborers business agent told Cleminson that if he refused to sign the Laborers agreement, the Laborers, Electricians, Carpenters and Plumbers would picket the job for successive periods of time in each case amounting to 30 days. The Laborers picketed the Palmdale site on a daily basis from March 4 until April 3, when the Laborers were informed by Lujac's superintendent that Cleminson had permanently vacated the job.



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On the same day, April 3, the business agent of Carpenters Local 2185 presented Lujac's superintendent at the site with a copy of the LABCTC Articles of Agreement (herein the short form agreement) and requested that he sign it. The short form agreement proscribed subcontracting to a contractor not a signatory to an agreement with the LABCTC and contained "self help" provisions in the event Lujac breached this agreement. 1/ When Lujac's superintendent refused to sign, the Carpenters' business agent informed him that the picketing would continue until Lujac was signatory to the agreement.

The picketing of the Palmdale site resumed on April 4, with signs stating "Lujac Unfair to Los Angeles Building and Construction Trades Council." April 4 was also the last day that Lujac's superintendent was at the site.

Sometime between April 4 and April 9, Jack Ewins, president of Lujac, Inc., was told by the Carpenters business agent at the site that the picketing would continue until Lujac either became signatory to the short-form agreement or joined the Building Industry Association (BIA), an employer association of construction contractors. BIA members are bound by the Master Labor Agreement between the BIA and the LABCTC. The Master Agreement, like the short form agreement, prohibits subcontracting of work performed at the jobsite to contractors not under agreement with the appropriate union member of the LABCTC, but, unlike the short form agreement, contains no "self help" provisions.

During the time the above picketing occurred, Lujac owned no materials and had no employees at the site except for its superintendent, who was present only until April 4 but not thereafter. 2/ Lujac did own a jobtrailer at the site with a sign in its window displaying Lujac's name and business address and also leased a portable toilet and trash bin used on the site.

1/ Article IV of the LABCTC short form agreement is a typical union signatory clause, providing that: "The Employer . . . agrees that he shall contract or subcontract all jobsite work . . . to a person that is a party to an executed Agreement with the appropriate Union . . . affiliated with the [LABCTC]. . . . Article IX of the same short form agreement provides in pertinent part:

"During the time of any violation of any of the provisions of this Agreement by the Employer . . . the affiliated Unions shall be released and relieved of any obligation to furnish workmen to any of them." (Emphasis added).

The short form agreement provides for three signatories, the Employer, the "submitting" Local Union and the LABCTC.

2/ Lujac may have had construction employees at other sites during this dispute. However, there is no indication that the unions involved had any knowledge of this.

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President Ewins made application to the BIA on April 9 and paid the \$300 membership fee. 3/ At that point the picketing ceased. Lujac thereafter filed Section 8(b)(4)(i)(ii)(A) and (B), 8(b)(7)(C) and 8(e) charges against the LABCTC and its member unions.

ACTION

It was concluded that, absent settlement, complaint should issue alleging that Carpenters Local 2185 and the LABCTC engaged in picketing of Lujac from April 4 through April 9 in violation of Section 8(b)(4)(i)(ii)(A) and (B) of the Act. 4/

FOIA Exemption 5

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3/ The ROF indicates that both Lujac, Inc., and its president, Ewins, had joined the BIA 6 to 10 years earlier and that neither had formally resigned prior to the instant dispute. According to Ewins, however, he assumed he was no longer a member of the BIA because of the several years during which he had been "inactive." The Region found that Lujac, Inc., and/or Ewins in fact "joined" the BIA in response to the unlawful picketing. Such a finding is necessarily premised upon Lujac not already being a member at the time he "joined."

4/ The Laborers were named only in a charge alleging violations of Section 8(b)(7)(C) which the Region has decided to dismiss for lack of merit.

5/

FOIA Exemption 5.

The Carpenters Local 2185 business agent gave Lujac's president, Ewins, alternative means of avoiding further picketing when he told Ewins that the picketing would continue until Lujac either became a member of the BIA or signatory to the short form agreement. The picketing of Lujac therefore constituted dual violations of Section 8(b)(4)(i)(ii)(A) of the Act in that it had both the objects of forcing Lujac to join an employer organization 6/ and of forcing Lujac to enter into an agreement outside the ambit of the construction industry proviso to Section 8(e) because of the self-help provisions contained therein and thus prohibited by Section 8(e). 7/

The picketing of Lujac was also deemed violative of Section 8(b)(4)(i)(ii)(B) of the Act since there was insufficient "presence" of Lujac at the site and the picketing was therefore viewed as intended to enmesh the neutral subcontractors in the dispute between the LABCTC and Lujac, Los Angeles Building and Construction Trades Council (Silver View Associates), 216 NLRB No. 55. In Silver View, the owner-partners of Silver View Associates spent about 16 hours per week at one picketed site and 6 hours per week at the other picketed site. Silver View had no employees, supervisors, representatives, shed or equipment at either site, although the company did own a trailer at one of the sites. The Board concluded that by picketing the two sites the Trades Council failed to abide by the Board's Moore Dry Dock standards, since the picketing did not occur when the primary employer was engaged in its normal business at the situs of the dispute. See Sailors' Union of the Pacific, AFL (Moore Dry Dock Co.), 92 NLRB 547, 549. Lujac, like Silver View, employed no employees at the Palmdale site and, with the exception of a trailer 8/ owned no equipment or materials on the site at the time the picketing occurred. There is no indication, that Lujac president, Ewins, regularly spent a significant amount of time at the Palmdale site. Further, Lujac's superintendent had left the site permanently by April 4, when the target of the picketing changed from Cleminson, the nonunion subcontractor, to Lujac, the general contractor.

6/ ILWU, Local 8 (General Ore), 126 NLRB 172; Glass Workers Local 1892 (Frank J. Rooney, Inc.), 141 NLRB 106, 116.

7/ Fresno, Madera, Kings and Tulare Counties Building and Construction Trades Council (Gage Brothers Construction), 218 NLRB No. 12.

In Gage Brothers, the union was found to have violated Section 8(b)(4)(A) of the Act by picketing with an object of forcing the employer to enter into an agreement with a clause identical to that in the instant case. Slip on, at 6-8. Since the short form is an unlawful Section 8(e) agreement due to its "self help" provision it is unnecessary to reach the question whether the picketing would also be violative of Section 8(b)(4)(A) even in the absence of such self-help provisions, in light of the Supreme Court's Connell decision.

8/ In addition, Lujac leased a portable toilet and trash bin for use at the site.

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It may fairly be argued that Lujac exhibited even less indicia of presence at the construction site than did Silver View in view of the absence of any evidence that Ewins regularly spent a significant amount of time at the site. It should, therefore, be argued that the picketing was necessarily directed at neutral subcontractors and thereby violated Section 8(b)(4)(B) of the Act.

FOIA Exemption 5.

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